Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-416

CITY OF LOS ANGELES,

Petitioner,

vs.

PAUL JOHNSON, NORA JOHNSON and the Secretary of Housing and Urban Development,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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CITY OF LOS ANGELES,

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vs.

PAUL JOHNSON, NORA JOHNSON and the Secretary of Housing and Urban Development,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit entered in this action on May 10, 1979. Rehearing was denied on June 14, 1979. The decision of the Ninth Circuit affirmed the judgment of the United States District Court for the Central District of California entered on May 9, 1977.

Opinions Below.

The Judgment and the Findings of Facts and Conclusions of Law of the United District Court for the Central District of California are printed as Appendix A. The opinion of the United States Court of Appeals for the Ninth Circuit reported at 597 F.2d 174 affirming the judgment of the District Court is printed as Appendix B. The order of the Court of Appeals denying rehearing is printed as Appendix C.

Jurisdiction.

The decision of the Court of Appeals for the Ninth Circuit was entered on May 10, 1979. The separate motions of the City of Los Angeles and Pauline Rust for rehearing were both denied on June 14, 1979.

This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

Questions Presented.

1. When the Department of Housing and Urban Development acquires residential real property through its loan guarantee program, must the Department make installment payments on a recorded preexisting assessment bond held by a private investor and arising out of a prior assessment levied for local improvements while the property was in private ownership?

2. If the Department of Housing and Urban Development fails to make such installment payments may the bondholder institute nonjudicial procedures under state law to foreclose the bond?

3. May a mortgage held by the Federal National Mortgage Association encumbering property which is in the ownership and use of private individuals be extinguished by nonjudicial foreclosure for nonpayment of installments on a bond levied for local improvements?

4. Is notice of pendency of a bond foreclosure sale of record with the County Recorder, and which furnishes constructive notice to subsequent purchasers, effective notice to purchasers of the property from the Department of Housing and Urban Development?

All of the above questions were presented to the District Court which decided only Questions 1 and

4 in its Findings of Fact and Conclusions of Law. The Court of Appeals decided only Question 3 and affirmed the Judgment of the District Court while stating it expressed no view on any other question.

Constitutional and Statutory Provisions Involved.

1. United States Constitution, Article VI, Clause 2—"Supremacy Clause":

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. United States Constitution, Fifth Amendment:

> "No person shall . . . be deprived of life, liberty or property without due process of law; . . . ."

3. United States Constitution, Tenth Amendment:

> "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."

4. National Housing Act, 12 U.S.C. §§ 1714 and 1723a(a) and (c). The texts of these sections are printed as Appendix D.

5. Improvement Act of 1911 (California Streets and Highways Code §§ 5000 *et seq.*) §§ 3121, 5372, 6500, 6501, 6503 and 6572. The texts of these sections are printed as Appendix E.

Statement of the Case.

This case arises out of the foreclosure of a street improvement bond on a parcel of property located at 342 East 105th Street in Los Angeles. The property was purchased on December 3, 1968, by Cecil Carl Presley and Jeweline Presley who took title subject to a deed of trust in favor of Imperial Bank as security for a purchase money loan. The trust deed was insured by FHA. On April 3, 1969, the beneficial interest under the deed of trust was assigned to the Federal National Mortgage Association [hereinafter FNMA].

On July 19, 1971, FNMA recorded with the Los Angeles County Recorder a Notice of Default and Election to Sell Under Deed of Trust and simultaneously recorded a Substitution of Trustee substituting itself as trustee in place of Imperial Bank. On August 14, 1971, the City issued Bond No. 746, Series 5 for the improvement of 103rd Street pursuant to the provisions of the Improvement Act of 1911, California Streets and Highways Code Sections 5000 *et seq.*[1] At that time, the property was still owned by the Presleys subject to the deed of trust in favor of FNMA as assignee of the beneficial interest. The Department of Housing and Urban Development [hereinafter HUD] had no interest in the property at that time. On November 19, 1971, FNMA paid the first installment of $14.00 on the street improvement bond.

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[1]Hereinafter all section references will be to the California Streets and Highway Code unless otherwise indicated.

On January 19, 1972, FNMA, as trustee, conveyed the subject property to itself. The trustee's deed upon sale was recorded January 20, 1972. On January 25, 1972, FNMA executed a grant deed recorded March 3, 1972, conveying the property to HUD in return for FHA mortgage insurance benefits.

After the conveyance to HUD, no payments on the preexisting street improvement bond were made and the bondholder, Gross and Company, demanded foreclosure pursuant to Section 6500. Notice of pendency of the bond foreclosure sale was recorded as required by Section 3121 and on July 26, 1973, Notice of Sale was mailed to the following parties:

1. Cecil Carl Presley
   342 East 105th Street
   Los Angeles, California 90003
2. Federal National Mortgage Association
   Secretary of Housing and Urban Development
   FHA Asst. Commissioner Controller
   Washington, D. C.
3. Housing and Urban Development
   Property Management Division
   2500 Wilshire Boulevard
   Los Angeles, California 90057

On September 21, 1973, a grant deed was recorded conveying the property to Paul and Nora Johnson. A note for the entire purchase price was secured by a Short Form Deed of Trust and Assignment of Rents in favor of California Mortgage Service as beneficiary recorded on the same date. The note and deed were

insured by FHA. On January 10, 1974, the beneficial interest under the deed of trust was assigned to FNMA.

On February 28, 1974, a second notice of the bond foreclosure sale was sent by the City Treasurer to:

1. Federal National Mortgage Association
   Secretary of Housing and Urban Development
   FHA Asst. Commissioner Controller
   Washington, D. C.

2. Cecil Carl Presley
   342 East 105th Street
   Los Angeles, California 90003

On March 18, 1974, a sale to foreclose the street improvement bond was held in the Office of the City Treasurer and Certificate of Sale No. 11883 was issued to the purchaser, Pauline Rust. On February 28, 1975, a Notice to Redeem the subject property from the bond foreclosure sale was posted on the property and mailed to Paul and Nora Johnson. The Johnsons received the posted notice on the same day and the mailed notice shortly thereafter. The property was not redeemed, and on March 31, 1975, the City Treasurer issued a Treasurer's Deed recorded April 1, 1975, conveying the property to Pauline Rust.

Thereafter, Rust filed an action in ejectment in state court against Paul and Nora Johnson. The Johnsons filed an answer and a cross-complaint in state court naming Rust, the City and the Secretary of Housing and Urban Development as cross-defendants. The case was then removed to the United States District Court for the Central District of California upon the petition of the Secretary pursuant to 28 U.S.C. § 1442(a)(1).

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

The Court of Appeals has held that where FNMA acquires a security interest in property which is subject to a preexisting local improvement bond held by a private investor, no action to enforce the bond lien may be taken which would impair FNMA's subsequently acquired interest. Even where the bond is a lien on the property prior to FNMA's mortgage, FNMA holds free of that lien. This ruling is based upon the holding that although FNMA is a private corporation operated for the profit of its stockholders, it is also a "federal instrumentality" by virtue of being federally chartered. No statutory authority was cited which grants to property subject to a FNMA mortgage immunity from nondiscriminatory local assessments or foreclosure proceedings. The Court of Appeals based its decision directly upon the Supremacy Clause (U.S. Constitution, Art. VI, Clause 2). Yet no precedent was cited for the proposition that a *private* corporation, even though a "federal instrumentality", acquires such a constitutional "implied immunity" not expressly granted by Congress.

From its inception, the doctrine of implied immunity has never been held to apply to the taxation of the property of "federal instrumentalities" as distinguished from that of the United States itself or federal agencies. In the seminal case of *M'Culloch v. Maryland*, 4 Wheat. (17 U.S.) 315, 4 L.Ed. 579 (1819), this Court held that the operation of the Bank of the United States

and its bank notes were protected from the states by implied immunity under the Supremacy Clause. However, the Court held that this immunity did not extend to the bank's real property. The Court stated at page 346, 4 L.Ed. at 609:

> "This opinion does not deprive the states of any resources which they originally possessed. *It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state,* nor to a tax imposed on the interest which citizens of Maryland may hold in this institution in common with other property of the same description throughout the state. But this is a tax on the operation of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional." [Emphasis added.]

This rule was reaffirmed in *Osborne v. Bank of the United States,* 90 Wheat. (12 U.S.) 738, 6 L.Ed. 204 (1824) and *Union Pacific R.R. Co. v. Peniston,* 18 Wall. (85 U.S.) 5, 21 L.Ed. 787 (1873).

In *Van Brocklin v. Tennessee,* 117 U.S. 151, 29 L.Ed. 845 (1886) this Court held that the states could not tax property owned by the United States, and in *Clallam County v. United States,* 263 U.S. 341, 68 L.Ed. 328 (1923) this Court extended that protection to the property of a *wholly owned* government corporation (the United States Spruce Production Corporation). In both cases this Court restated that a nondiscriminatory tax may be levied on real property of a "federal instrumentality" as distinguished from

the real property of the United States itself or its agencies. In *Clallam County* this Court described the distinction at 263 U.S. at page 344, 68 L.Ed. 331:

> "In short, the Spruce Production Corporation was organized by the United States as an instrumentality for carrying on the war, all its property was conveyed to it by or bought with money coming from the United States, and was used by it solely as a means to that end, and when the war was over it stopped its work except so far as it found it necessary to go on in order to wind up its affairs. When the winding up is accomplished there will be a loss; but whatever assets may be realized will go to the United States. Upon these facts immunity is claimed from taxation by a state.
>
> . . .
>
> "The state claims the right to tax on the ground that taxation of the agency may be taxation of the means employed by the government, and invalid upon admitted grounds; but that taxation of the property of the agent is not taxation of the means. We agree that 'it is not always, or generally, taxation of the means,' as said by Chief Justice Chase in *Thomson v. Union P.R. Co.*, 9 Wall. 579, 591, 19 L.Ed. 792, 798. But it may be, and, in our opinion, clearly is, when, as here, not only the agent was created, but all the agent's property was acquired and used, for the sole purpose of producing a weapon for the war. *This is not like the case of a corporation having its own purposes as well as those of the United States, and interested in profit on its own account.* The incorporation and

> the formal erection of a new personality was only for the convenience of the United States to carry out its ends." [Emphasis added.]

FNMA is a private profit making corporation which sells shares on the New York Stock Exchange, and clearly is a "case of a corporation having its own purposes as well as those of the United States, and interested in profit on its own account."

The Court of Appeals apparently recognized the validity of the original assessment but held that the later proceedings to foreclose the bond were entirely invalid as they have the effect of impairing FNMA's interest. This gives FNMA's property interests a protection no other similar interest is given.

The foreclosure proceedings involved in this case arose when an installment payment due on the bond was not paid, and the bondholder—a private investor who purchased the bond after the completed assessment levy—exercised his statutory right to demand foreclosure. The susceptibility of secondary interests held by the United States or federal agencies to divestiture by such local foreclosure proceedings was established by *United States v. Brosnan*, 363 U.S. 237, 80 S.Ct. 1108 (1960) in which this Court upheld the divesting of a federal tax lien by nonjudicial foreclosure under a power of sale contained in a deed of trust. This Court stated at page 242:

> "[W]hen Congress resorted to the use of liens, it came into an area of complex property relationship long since settled and regulated by state law. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our

> disregarding state procedures. Long accepted non-judicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well established state procedures governing their enforcement, or superimposing on them a new federal rule."

However, the Court of Appeals held that the reasoning of the *Brosnan* case does not apply here because as to the interests of FNMA state law should not be adopted as the federal rule of decision. Thereby the Court of Appeals stated on the one hand that the assessment and the later bond lien are valid but on the other hand that the lien cannot be effectively enforced. Not only the city interest was thereby affected; private property rights of bond owners are extinguished or gravely impaired.

The Court of Appeals treated the interest of the private corporate federal instrumentality in the same way as this Court has treated mortgages held directly by the United States itself or federal agencies. In *New Brunswick v. United States,* 276 U.S. 547, 72 L.Ed. 693 (1928) and *S.R.A. Inc. v. Minnesota,* 327 U.S. 58, 90 L.Ed. 851 (1946), this Court held that property in which the United States has only a security interest may be taxed and sold to satisfy even junior tax liens so long as the senior mortgage held by the United States is not impaired. The Court of Appeals, without

congressional direction, extends even greater protection against foreclosure to the property of a private profit making federally chartered corporation by making its mortgage superior even to senior liens.

No decision of this Court or of any Court of Appeals other than in this case has been discovered which so extends the doctrine of implied immunity. Nor has any decision other than this one of the Ninth Circuit invested a federally chartered private corporation with any powers or immunities not specifically granted by Congress. It is vital that this Court decide to what extent ordinary residential real property acquires practical immunity from sharing the cost of benefiting local improvements simply because it is purchased with funds loaned by FNMA.

II.

The Decision of the Court of Appeals Conflicts With the Guiding Principles Set Forth by This Court in United States v. Kimbell Foods, ... U.S. ....., 59 L.Ed.2d 711, 99 S.Ct. 1448 (1979).

After the oral argument before the Court of Appeals in this case but before the decision of that Court, this Court issued its decision in *United States v. Kimbell Foods,* ..... U.S. ....., 59 L.Ed.2d 711, 99 S.Ct. 1448 (1979). In that case this Court held that security interests held by the Small Business Administration and Farmers Home Administration arising out of federal loan programs administered by those agencies could be divested by local procedures to foreclose private liens.

The Court of Appeals held that the *Kimbell Foods* decision, holding valid the divesting of interests held by two federal agencies, did not apply to interests

held by FNMA. The Court based its distinction on its analysis that the S.B.A. and F.Hm.A. can "individually tailor their loans" whereas the FNMA "has little or no contact with its mortgagors and it does not individually negotiate the mortgage contracts it receives." The Court of Appeals stated at 597 F.2d at 180:

> "As a secondary market facility, F.N.M.A. buys mortgages which are of such quality, type and class as those which meet the general purchase standards of private institutional investors. *See* 12 U.S.C. § 1719(a)(1), as amended (Supp.). Thus, F.N.M.A. operates on an entirely different plane and under a more elastic set of regulations than either the S.B.A. or F.Hm.A."

The Court of Appeals thereby reaches the anomalous result that the S.B.A. and F.Mm.A., which operate their loan programs under specific federal rules and regulations, and are full-fledged federal agencies, are therefore subject to state rules of law whereas FNMA, which operates substantially in the same manner as any other secondary mortgage facility, and is a privately operated profit making corporation, is impliedly immune from such nondiscriminatory state procedures.

While FNMA itself is apparently not involved in the detailed financial arrangements with the ultimate recipient of funds as are the S.B.A. or the F.Hm.A., nevertheless FNMA operates through agents subject to its control and direction who do handle such details. In fact, FNMA does protect its interests by acquiring only federally guaranteed loans, and the federal agency guarantees such loans only when they meet minimum standards, causing repayment by the mortgagor to be likely. There is further no reason why FNMA cannot

protect its interest in the event of the possibility of a bond foreclosure. In fact, in the present case FNMA did just that when it made a payment on the outstanding bond during the course of foreclosing its mortgage and prior to obtaining loan guarantee benefits from the Department of Housing and Urban Development.

There is therefore no need for FNMA to receive "the extraordinary priority accorded federal tax liens." The distinction between tax liens and security interest obtained through federal lending programs was explained by this Court in *Kimbell Foods, supra,* 59 L.Ed.2d at 728-29, 99 S.Ct. at 1462:

> "[W]hen the United States operates as a money-lending institution under carefully circumscribed programs, its interest in recouping the limited sums advanced is of a different order. Thus there is less need here than the tax lien area to invoke protective measures against defaulting debtors in a manner disruptive of existing credit markets.
>
> "To equate tax liens with these consensual liens also misperceives the principal congressional concerns underlying the respective statutes. The overriding purpose of the tax lien statute obviously is to insure prompt revenue collection. The same cannot be said of the S.B.A. and F.H.A. lending programs. They are a form of social welfare legislation, primarily designed to assist farmers and businesses that cannot obtain funds from private lenders on reasonable terms. We believe that had Congress intended the private commercial sector, rather than taxpayers in general, to bear the risk of default entailed by these public welfare programs, it would have established a priority scheme displacing state law. Far from doing so, both Congress and the agencies have expressly recog-

> nized the priority of certain private liens over the agencies' security interest, thereby indicating that the extraordinary safeguards applied in the tax lien area are unnecessary to maintain the lending programs."

Similarly, Congress has expressed no intent that the private commercial sector should bear the risk of default related to the public welfare program with which FNMA is connected.

In holding that FNMA has an implied immunity from state foreclosure proceedings the Court of Appeals gave no consideration whatsoever to the potential effect of such a rule on the improvement bond market or on the ability of local governments to finance local improvements. Yet this Court in *Kimbell Foods* emphasized that the potential effect of such a rule is an important consideration in deciding whether or not to apply it. This Court stated at 59 L.Ed.2d at 730-31, 99 S.Ct. at 1464-65:

> "In structuring financial transactions, businessmen depend upon state commercial law to provide the stability essential for reliable evaluation of the risks involved. Cf. *National Bank of Genesee v. Whitney*, 103 U.S. 99, 102, 26 L.Ed. 443 (1881). However subjecting federal contractual liens to the doctrines developed in the tax lien area could undermine that stability. Creditors who justifiably rely on state law to obtain superior liens would have their expectations thwarted whenever a federal contractual security interest suddenly appeared and took precedence.
>
> "Because the ultimate consequences of altering federal commercial practices are so difficult to foresee, we hesitate to create new uncertainties, in

> the absence of careful legislative deliberation. Of course, formulating special rules to govern the priority of consensual liens in issue here would be justified if necessary to vindicate important national interests. But neither the Government nor the Court of Appeals advanced any concrete reasons for rejecting well established commercial rules which have proven workable over time. Thus, the prudent course is to adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation.
>
> "Accordingly, we hold that absent a congressional directive, the relative priority of private liens and consensual liens arising from these Government lending programs is to be determined under nondiscriminatory state laws."

The effect of a rule which immunizes FNMA interests from procedures to foreclose local bonds would be to raise doubts in the mind of any potential investor in local improvement bonds as to the practical collectibility of those bonds. At any time during the existence of such a bond on a piece of residential property, it could be sold with FNMA financing, and for the period of the existence of FNMA's interest the bond might be unenforceable as a practical matter because of the typically minuscule or nonexisting equity obtained by such purchasers. Foreclosure would at best be a pointless exercise if the FNMA interest was immune. Under these circumstances, what prudent investor would take a chance on local improvement bonds?

The Improvement Act of 1911, along with predecessor acts, has been one of the most important tools for local improvement in California for nearly a century. After the passage of Proposition 13 limiting property

tax revenues, the 1911 Act acquires an increasing importance. Yet the decision of the Court of Appeals constitutes a major blow to the viability of that act and the ability of cities to deal with pressing urban problems. In particular, a large portion of properties in which FNMA acquires interests is located in lower income urban areas which most require public improvement to help prevent further deterioration and foster revitalization. The immunity granted by the Court of Appeals seriously impairs the ability of local governments to deal with these problems and to maintain and improve the environment of those very persons whom the federal loan guarantee program is intended to benefit.

Conclusion.

Congress has expressed no intent that FNMA interests be immune from foreclosure of local improvement bonds. The Court of Appeals created that immunity by expanding the Supremacy Clause to a federally chartered corporation when Congress chose not to do so. No decision of this Court authorizes such an expansion. Therefore, this Court should issue its writ of certiorari to review the decision and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX A.

Judgment.

United States District Court, Central District of California.

Pauline Rust, Plaintiff, v. Paul Johnson, Nora Johnson, etc., et al., Defendants.

Paul Johnson and Nora Johnson, Cross-Complainants, v. Pauline Rust, The City of Los Angeles, Secretary of Housing and Urban Development, etc., et al., Cross-Defendants.

Carla Hills, Secretary of Housing and Urban Development, Cross-Claimant, v. Pauline Rust, Cross-Defendant. No. CV-76-1771-MML.

Filed: May 5, 1977.

This action came on for trial before the Court, Honorable Malcolm M. Lucas, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered, and in accordance with the Findings of Fact and Conclusions of Law filed herewith,

IT IS ORDERED AND ADJUDGED that all right, title and interest in the property, which is the subject of this action, is declared to be held by Paul Johnson and Nora Johnson, subject to a deed of trust and note on the property which has been assigned to the Secretary of Housing and Urban Development, that Plaintiff Pauline Rust has no right, title or interest of any kind whatsoever in this property and her claims are void and of no effect, that the action of the City of Los Angeles was an unconstitutional exercise of state power over property of the United States, that in selling this property the City of Los Angeles

failed to comply with the requirements of California Streets and Highways Code, §§5000, et seq., that cross-complainants Paul Johnson and Nora Johnson take nothing on their cross-complaint for damages and that each party bear its own costs in this matter.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, copies of this Judgment on the attorneys for the parties in this action.

Dated: May 5, 1977.

/s/ Malcolm M. Lucas
Malcolm M. Lucas
United States District Judge

Findings of Fact and Conclusions of Law.

United States District Court, Central District of California.

Pauline Rust, Plaintiff, v. Paul Johnson, Nora Johnson, etc., et al., Defendants.

Paul Johnson and Nora Johnson, Cross-Complainants, v. Pauline Rust, The City of Los Angeles, Secretary of Housing and Urban Development, etc., et al., Cross-Defendants.

Carla Hills, Secretary of Housing and Urban Development, Cross-Claimant, v. Pauline Rust, Cross-Defendant. No. CV-76-1771-MML.

This matter having come on regularly for trial before the Honorable Malcolm M. Lucas, United States District Judge, the plaintiff being represented by L. Douglas Brown, Esquire, the defendants being represented by Clarence E. Blair, Esquire, the City of Los Angeles being represented by Deputy City Attorney Ken Cerlin and the Cross-Defendant Secretary of Housing and Urban Development being represented by Assistant United States Attorney J. Mark Waxman, and the court having read and considered all the pleadings, files, documents and memoranda presented in this case, as well as the evidence introduced at trial, and the oral presentation of counsel, the court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On December 3, 1968, Cecil Carl Presley and Jeweline Presley purchased the property which is the subject of this action subject to an FHA insured mortgage (FHA Case No. 041-212166-221). The first payment under the mortgage which was held by Imperial Bank was due February 1, 1969.

2. On April 3, 1969, the mortgage was assigned by Imperial Bank to the Federal National Mortgage Association.

3. On February 1, 1971, the mortgage went into default, and on July 19, 1971, FNMA instituted foreclosure proceedings.

4. On August 14, 1971, Bond No. 746, Series 5, for the improvement of 103rd Street was levied by the City of Los Angeles, ostensibly pursuant to the provisions of the Improvement Act of 1911. *See* California Streets and Highways Code §§ 5000 *et seq.*

5. On November 19, 1971, the first installment of $14.00 due under the bond was paid by FNMA in preparation for conveying clear title to the Secretary in exchange for mortgage insurance benefits.

6. On March 3, 1972, the property was conveyed to the Secretary in exchange for FHA insurance benefits after FNMA foreclosed the mortgage. It was during this period of the Secretary's ownership of the property that no payments were made on the bond installments. The City of Los Angeles used this fact to declare delinquency on the bond.

7. On July 18, 1973, a contract of sale was signed for the subject property between the Secretary and Paul and Nora Johnson.

8. On July 26, 1973, a notice of sale of property delinquent for nonpayment of street improvement was sent by the City to:

(1) "Cecil Carl Presley
342 East 105th Street
Los Angeles, California 90003."

(2) "Federal National Mortgage Association
Secretary of Housing and Urban Development
FHA Asst. Commision Controller,
Washington, D. C." [sic]

(3) "Housing and Urban Development
Property Management Division
2500 Wilshire Boulevard
Los Angeles, California 90057"

9. On September 21, 1973, a deed to Paul and Nora Johnson and deed of trust to the California Mortgage Service were recorded. The deed of trust was insured by FHA (Case No. 041-388147-235).

10. On January 10, 1974, the deed of trust relating to the Johnsons and the note was assigned to FNMA by California Mortgage Service.

11. On February 28, 1974, a second notice was sent to:

"Federal National Mortgage Association
Secretary of Housing and Urban Development
FHA Assistant Commissioner Controller
Washington, D. C."

Cecil Carl Presley
342 East 105th Street
Los Angeles, California 90003"

12. On March 18, 1974, Pauline Rust purchased the property at a sale held by the City and was issued Certificate of Sale No. 11883.

13. The City then issued a Notice to Redeem dated February 28, 1975.

14. On March 28, 1975, an Affidavit of Service of Notice to Redeem was made, but it indicated the

property was unoccupied. It did not state to what address the Notice was mailed.

15. When no redemption took place, the Treasurer of the City of Los Angeles deeded the property to Pauline Rust. Although dated March 31, 1975, the deed was not notarized until April 1, 1975.

15. On March 11, 1976, the deed of trust and note were assigned to the Secretary. The deed of trust assignment was recorded March 29, 1976.

16. The evidence presented fails to establish the claim that cross-complainants, Paul Johnson and Nora Johnson, or either of them, suffered emotional distress caused by the intentional outrageous conduct of the cross-defendants, Pauline Rust and City of Los Angeles.

CONCLUSIONS OF LAW

1. This court has jurisdiction over both the parties hereto and the subject matter of this action.

2. At issue in this case was the ability of the City of Los Angeles to sell property because of the failure of special assessment payments to be made. The reason that the City of Los Angeles commenced foreclosure and sale proceedings was that the Secretary of Housing and Urban Development, while the Secretary owned the land, failed to make payments on special assessments. Congress has not consented to the collection of such special assessments against the Secretary, however, and therefore the action of the City to require payment of assessment installments in this case was an unconstitutional exercise of State power over property of the United States. See *United States v. City of Adair*, No. 75-1608 (8th Cir., 1976); *Board of Directors of Red River Levee District No. 1 of Lafayette County, Arkansas v. Reconstruction Finance Corp.*,

170 F.2d 430 (8th Cir., 1948). See also *Van Brocklin v. Tennessee*, 117 U.S. 151 (1886).

3. In selling the property which is the subject of this lawsuit, the City failed to comply with the requirements of the Improvement Act of 1911, California Streets and Highways Code, §§ 5000, *et seq*. The City failed to comply in at least two respects. First, the Notice to Redeem was defective because the City of Los Angeles erroneously calculated the amount required for redemption. The notice to redeem issued by the City of Los Angeles indicated that $169.04 was required to be paid to redeem the property. The proper calculation, however, is set forth as follows pursuant to California Streets and Highways Code § 6531:

$146.65	purchase money
3.00	filing
3.00	recording (§6531(c))
.50	§6553
$153.15	
16.84	Interest 11 months at 1%
$169.99	

Second, the procedure was faulty because it failed to give the Johnsons, as the owners of the property, notice of the proposed sale prior to the sale. See *Friedman v. City of Los Angeles*, 52 Cal.Ap.3d 317 (1975).

4. By virtue of the inability of the City of Los Angeles to sell the property as it did in this case, all right, title and interest in the property, which is the subject of this action, is declared to be held by Paul Johnson and Nora Johnson, subject to a deed of trust and note on the property which has been

assigned to the Secretary as of March 11, 1976. Plaintiff Pauline Rust has no right, title or interest of any kind whatsoever in the property, and her claims are void and of no effect.

5. Neither Paul Johnson nor Nora Johnson are entitled to recover on their claim for intentional infliction of emotional distress.

Dated: May 5, 1977

/s/ Malcolm M. Lucas
Malcolm M. Lucas
United States District Judge

APPENDIX B.

Opinion.

United States Court of Appeals for the Ninth Circuit.

Pauline Rust, Appellant, v. Paul Johnson and Nora Johnson, Respondents. No. 77-2493.

City of Los Angeles, Appellant, v. Paul Johnson, Nora Johnson, and the Secretary of Housing and Urban Development, Respondents. No. 77-2602.

Filed May 10, 1979.

Appeal from the United States District Court
Central District of California

Before: WALLACE and HUG, Circuit Judges, and TEMPLAR, District Judge.*

This case arises out of the foreclosure of a street improvement bond on a parcel of property located at 342 East 105th Street in Los Angeles, California. The foreclosure resulted in two parties claiming title to the property and in a dispute over the power of the City of Los Angeles to foreclose on property in which the United States holds an interest.

FACTS

On August 14, 1971, the City of Los Angeles (City) assessed the property for street improvements in the amount of $158.36 and issued a bond to pay the assessment. At the time of the assessment, the Federal National Mortgage Association (FNMA) was in the process of foreclosing on a purchase money mortgage interest which it held in the property under a deed of trust. The deed of trust was insured by the Federal

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*Hon. George Templar, Senior United States District Judge for the District of Kansas, sitting by designation.

Housing Administration (FHA) and had been previously assigned to FNMA by the Imperial Bank.

FNMA completed its foreclosure and, on March 3, 1972, it conveyed the tract to the Secretary of Housing and Urban Development (HUD) in exchange for FHA insurance benefits. HUD owned the property from March 3, 1972 until September 21, 1973. During the period of its ownership, HUD did not make any payments on the street improvement bond. Consequently, the City commenced foreclosure and, on July 26, 1973, it sent notice to HUD and FNMA that the property would be sold for non-payment of installments due on the bond.

On September 21, 1973, HUD conveyed the tract to Paul and Nora Johnson. The Johnsons mortgaged the property in a deed of trust which they delivered to the California Mortgage Service. The deed secured a promissory note for the purchase price of the property and was insured by FHA. The California Mortgage Service assigned the deed of trust to FNMA on January 10, 1974 and FNMA held the deed until subsequent to the filing of this lawsuit when it assigned its rights to HUD.

The City posted a notice on the property and sent a second notice of sale to HUD and FNMA on February 28, 1974. Pursuant to the notice, the City completed foreclosure and sold the property to Pauline Rust on March 18, 1974. Rust received a treasurer's deed conveying the tract to her on March 31, 1975 and she later brought this action in state court to eject the Johnsons from the property.

The Johnsons filed a cross-complaint naming as cross-defendants Pauline Rust, the City of Los Angeles,

and HUD. HUD had the case removed to federal district court where, after a trial on the merits, the court held that the action of the City to collect payment on the bond was an unconstitutional exercise of state power over property of the United States. Accordingly, judgment was entered quieting title in the Johnsons and declaring the sale to Rust invalid. Rust and the City appeal.

DISCUSSION

I.

Appellants challenge the district court's characterization of the non-judicial foreclosure as an "exercise of state power." Foreclosure on a street improvement bond is authorized by Section 6500 of the California Streets and Highways Code which provides:

> "Whenever payment upon either the principal or the interest of any bond is not made to the bondholder when the coupon therefor is due, and the holder of the bond demands in writing that the [City] treasurer proceed to advertise and sell the lot or parcel of land described in the bond as being that upon which the assessment represented by the bond was levied, the treasurer shall proceed to advertise and sell the lot or parcel of land as provided in this chapter . . ."

In exercising the powers conferred by the statute, the City contends that the treasurer acts only as the special agent of the bondholder and that the City has no interest in either the bond or the payments. This argument ignores the purpose and operation of the statutory scheme. Under the Code, the City is authorized to order improvements, make assessments, issue bonds, collect payment on the bonds, and to

convey delinquent property after foreclosure is completed. Streets & Highways §§5240, 5343, 6422, 6500, 6555. These functions are performed pursuant to the taxing power of the state and in furtherance of the governmental purpose of providing for such improvements as the public interest or convenience may require. *Bryant v. Commissioner of Internal Revenue,* 111 F.2d 9, 13-14 (9th Cir. 1940); *City of Baldwin Park v. Stoskus,* 105 Cal.Rptr. 325, 503 P.2d 1333, 1335-36 (1972); *San Diego County v. Childs,* 217 Cal. 1109, 17 P.2d 734, 738 (1938); Streets & Highways §5101.

The entry of the bondholder into the transaction does not make the City any less interested in seeing that its assessments are paid. As this lawsuit demonstrates, the City remains involved in the enforcement of the lien after a bond has been issued and it has exclusive responsibility under the Code for conducting non-judicial foreclosures against delinquent property. Streets & Highways §§6500-6555. Therefore, we hold that the City is significantly involved in the process of collecting payments on a street improvement bond and that the action taken in this case was an exercise of state power. *See generally Melara v. Kennedy,* 541 F.2d 802, 804-05 (9th Cir. 1976); *Adams v. Southern California First National Bank,* 492 F.2d 324, 330-31 (9th Cir. 1973), *cert. denied* 419 U.S. 1006 (1974).

II.

Appellants also challenge the district court's determination that the City exercised its power over "property of the United States." Appellants' contention rests in part on the assumption that "property of the United

States" includes only property actually owned by the United States and does not include a mortgage interest held by a federal instrumentality. No basis in law exists for treating mortgage interests of federal instrumentalities differently from other property of the United States. *City of New Brunswick v. United States,* 276 U.S. 547 (1927); *United States v. Roessling,* 280 F.2d 933, 936 (5th Cir. 1960); *Branden v. Driver,* 293 F.Supp. 871, 872-73 (N.D.Cal. 1968), affirmed 441 F.2d 1171 (9th Cir. 1971); *Clark Investment Co. v. United States,* 364 F.2d 7, 9 (9th Cir. 1966).

Nevertheless, appellants contend that FNMA should not be treated as a federal instrumentality. The reasons advanced for this contention are: (1) that FNMA is a privately owned corporation and (2) that FNMA engages in certain non-governmental functions. Responding to the argument that FNMA should be treated like a private lending institution, we are persuaded that such a contention is contrary to the intent expressed when the Act creating the present corporate structure of FNMA was enacted by Congress.

FNMA owes its existence to Congressional recognition of the importance of secondary credit in bringing about the National goal of "a decent home and a suitable living environment for every American family." U.S. Code Service at 2027, 2042 (1950); 12 U.S.C §1701t. Congress intended FNMA to operate as a reserve market for mortgage investors and to thereby facilitate the distribution of investment capital available for home mortgage financing. U.S. Code Service at 2041 (1950); 12 U.S.C. §1716. To assist FNMA in the performance of its secondary market functions, Congress enacted laws granting FNMA special rights and privileges. For example, FNMA is exempt from

having to qualify to do business in any state and it has immunity from state taxation (except for taxes on real estate). 12 U.S.C. §§1723a(a), 1723a(c)(2).

In 1968, Congress transferred ownership of FNMA to the private sector. 12 U.S.C. §1718, as amended (Supp.). The change came about as a result of Congressional intent to reduce the impact of FNMA's operations on the budget of the United States. U.S. Code Service at 2041 (1950); U.S. Code Cong. & Ad. News at 2943-44 (1968). In making the change in FNMA's capital structure, Congress indicated in its legislative history that: "The new FNMA would be a Government-sponsored private corporation, regulated by the Secretary and would have a status analogous to that of the Federal land banks and the Federal home loan banks." Cong. & Ad. News, *supra.*

We have been unable to find anything in the legislative history or in the statutes governing the operation of FNMA which supports the conclusion that Congress intended to strip FNMA of its status as a federal instrumentality. A survey of the cases involving the Federal land banks and the Federal home loan banks reveals that they are treated as federal instrumentalities engaged in the performance of governmental functions even though their stock may be privately owned. *Federal Land Bank v. Priddy,* 295 U.S. 229, 231 (1935); *Federal Land Bank v. Bismarck Lumber Co.,* 314 U.S. 95, 101-04 (1941); *Fahey v. O'Melveny & Myers,* 200 F.2d 420, 446, 454 (9th Cir. 1952), cert. denied sub nom. *Willhoit v. Fahey,* 345 U.S. 952 (1953); 12 U.S.C. §§692, 1426. Congress apparently intends that FNMA should be treated in the same fashion. Cong. & Ad. News, *supra.* Further evidence of this intent appears from the fact that FNMA's officers

and employees are subject to federal civil service and classification laws. 12 U.S.C. §1723a(d)(2), as amended (Supp.). Moreover, FNMA continues to possess the privileges conferred under 12 U.S.C. §1723a and it remains subject to the general regulatory power of the Secretary of Housing and Urban Development. 12 U.S.C. 1723a(h).

The cases cited in support of the argument that FNMA is not a federal instrumentality did not deal with the question presented in the case at bar. *See Roberts v. Cameron-Brown Co.*, 556 F.2d 356, 358-60 (5th Cir. 1977); *Northrip v. Federal National Mortgage Association*, 527 F.2d 23, 30-32 (6th Cir. 1975). Rather they involved non-judicial foreclosures under a "power of sale" clause in a deed of trust. Unlike the foreclosure in the instant case, foreclosures under a "power of sale" clause involve rights created by contract and the Courts have held that "power of sale" foreclosures do not involve state action. *Charmicor v. Deaner*, 572 F.2d 694, 695 (9th Cir. 1978); *Bryant v. Jefferson Federal Savings & Loan Association*, 509 F.2d 511, 513-16 (D.C. Cir. 1974). Here, we are not concerned with whether FNMA is engaged in state or federal action when it institutes foreclosure under a "power of sale" clause in a deed. Since this was the only issue before the Courts in the *Roberts* and *Northrip* cases, *supra*, we do not believe that their decisions lend authoritative support to the position taken by appellants on this appeal.

We note with approval the decision of the district court in *Federal National Mortgage Association v. Lefkowitz*, 390 F.Supp. 1364, 1368 (S.D.N.Y. 1975) which held that FNMA is a federal instrumentality and that the effect of a state statute upon FNMA's

property may be considered to determine the validity of the statute under the supremacy clause of the United States Constitution. And we hold that an exercise of state power over a mortgage interest held by FNMA constitutes an exercise of state power over property of the United States.

III.

The third and, in our opinion, the decisive issue in this lawsuit concerns the constitutionality of the City's foreclosure proceeding. What we are dealing with is in substance a supremacy clause question and we must decide whether the improvement lien could be enforced without first excluding the federal interest.

The rights conferred upon a purchaser by a treasurer's deed are set out in Section 6555 of the Streets and Highways Code which provides in pertinent part as follows:

> "The deed of the treasurer when duly acknowledged or proved, is primary evidence of the regularity of the proceedings theretofore had, and conveys to the grantee absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all encumbrances, except: . . ."

On the dates of sale and conveyance to appellant Rust, FNMA held an assignment of a purchase money mortgage interest in the property. The City made no attempt to protect this interest when it sold and conveyed the tract to Rust and no allegation is made that FNMA's interest would be protected under any of the exceptions listed in Section 6555. By taking the position that it can convey absolute title in derogation of the federal interest, the City in effect asks

this Court to extinguish FNMA's interest in the property. We believe that Congress did not intend for the City to have this power and that, in the absence of Congressional intent to the contrary, the action of the City cannot be sustained.

Our view of the situation is well expressed in the case of *City of New Brunswick v. United States, supra,* 276 U.S. at 555-56. There, land owned by an instrumentality of the United States was sold to purchasers who executed mortgages to the instrumentality to secure the balance of the purchase price. The city of New Brunswick assessed the property for taxes in the year following the sale and, when the taxes went unpaid, it instituted proceedings to sell the lots to satisfy its lien. On appeal from an order enjoining the sale, the Supreme Court held that the purchasers' interest could be subjected to sale but the interest of the instrumentality could not. In so holding, the Court recognized the paramount interest of the United States in the property and ordered the City to protect that interest by expressly excluding it from the tax sale.

The principle enunciated in the *New Brunswick* decision has found general application in other cases involving similar disputes over the state's authority to enforce its lien against a federal interest in property. *Roessling, supra,* 280 F.2d at 936; *S.R.A., Inc. v. Minnesota,* 327 U.S. 558 (1946); *Van Brocklin v. Tennessee,* 117 U.S. 151, 179 (1885). We agree with the reasoning expressed in those cases and with the statement in *United States v. General Douglas MacArthur Senior Village, Inc.,* 470 F.2d 675, 680 (2d Cir. 1972), *cert. denied sub nom. County of Nassau v. United States,* 412 U.S. 922 (1973) that "local governments cannot take any action to collect unpaid taxes

assessed against property which would have the effect of reducing or destroying the value of a federally held purchase-money mortgage lien."

State legislation must yield under the supremacy clause of the Constitution to the interests of the federal government when the legislation as applied interferes with the federal pupose or operates to impede or condition the implementation of federal policies and programs. *Public Utility District of Pend Oreille v. United States,* 417 F.2d 200 202 (9th Cir. 1969); *City of Los Angeles v. United States,* 355 F.Supp. 461, 465 (C.D. Cal. 1972). In this manner, the supremacy clause seeks to avoid the introduction of the disparity, confusion, and conflict which would follow if the Government's general authority is subject to local controls. *United States v. Allegheny County,* 322 U.S. 174, 183 (1944).

To sustain the action of the City in this case, we would run the risk of substantially impairing the Government's participation in the home mortgage market and of defeating the purpose of the National Housing Act. While we recognize that the City was engaging in a valid state function, this does not render its conduct constitutional or allow it to sell property without protecting the federal interest. *Perez v. Campbell,* 402 U.S. 637, 648-49 (1971); *S.R.A., Inc., supra,* 327 U.S. at 565-66. Accordingly, we hold that the foreclosure conducted by the City was invalid under the supremacy clause of the United States Constitution.

In an attempt to distinguish some of the decisions upon which we have based our holding, appellants contend those decisions involved federal interests created before the state and local liens attached and that

the same protection does not apply where the federal interest arises subsequent to the attachment of the local lien. In support of this argument, appellants refer the Court to *United States v. Brosnan,* 363 U.S. 237 (1960) and *United States v. Cless,* 254 F.2d 590 (3rd Cir. 1958).

Appellants' contention confuses the validity and priority of the lien with the real issue in this lawsuit. We are not concerned with the authority of the City to make the assessment or with the priuority under state law of the street improvement lien. The district court did not make any findings or conclusions on these issues. What we have decided is that under federal law the improvement lien cannot be enforced without protecting the federal interest.

The *Brosnan* and *Cless* decisions, *supra,* do not support or require a different conclusion from the one reached here. They involved a preliminary determination that state law should be the federal rule of decision. Under the state law applied in the *Brosnan* and *Cless* decisions, the interest held by the federal government could be subordinated and/or extinguished by non-judicial foreclosure proceedings. In a recent case involving the lending functions of the Small Business Administration (SBA) and the Farmers Home Administration (FHmA), the Supreme Court followed the same approach and held that "the prudent course is to adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accomodation." *United States v. Kimbell Foods, Inc.,* 47 U.S.L.W. 4342, 4349 (April 2, 1979). We note, however, that Congress has indicated an intent to have state law govern interests held by the SBA and FHMA. *See* 15

U.S.C. §646 and 7 U.S.C. §1981(d), as amended (Supp.). Moreover, the SBA and FHmA operate under a set of rules and regulations which allow them to individually tailor their loans. *See Kimbell, supra; United States v. Yazell,* 382 U.S. 341, 345-48 (1966); *United States v. California-Oregon Plywood, Inc.,* 527 F.2d 687 (9th Cir. 1975); *Ault v. Harris,* 317 F.Supp. 373 (D. Alas. 1968), affirmed 432 F.2d 441 (9th Cir. 1970).

FNMA, on the other hand, has little or no contact with its mortgagors and it does not individually negotiate the mortgage contracts it receives. As a secondary market facility, FNMA buys mortgages which are of such quality, type and class as those which meet the general purchase standards of private institutional investors. *See* 12 U.S.C. §1719(a)(1), as amended (Supp.). Thus, it appears that FNMA operates on an entirely different plane and under a more elastic set of regulations than either the SBA or FHmA. To subject it to the same rules which govern the lending programs of the SBA and FHmA would either limit the types of mortgages which FNMA can purchase or require the corporation to participate in the negotiations between its assignor and the mortgagor. This would impair the liquidity in the home mortgage market which Congress hoped to achieve by creating FNMA and, by restricting the mortgages available to FNMA, it would be contrary to the express intent of Congress which has been to expand rather than to limit the corporation's market. 12 U.S.C. §1716(a); Code Service, *supra,* at 2042; Cong. & Ad. News, *supra,* at 2944.

This is not a case where Congress has allowed the federal interest to be subject to state law. *Compare*

15 U.S.C. §646 and 7 U.S.C. §1981(d), as amended (Supp.). Nor is it a case where the federal instrumentality can easily protect itself by including a clause in the mortgage contract stating that it is exempt from state law because FNMA is not a party to the original contract. Consequently, we believe that state law should not be applied as the federal rule of decision in cases involving the lending functions of FNMA and that existing federal law should control. *See generally United States v. View Crest Garden Apartments, Inc.*, 268 F.2d 380, 383 (9th Cir. 1959), cert. denied 361 U.S. 884 (1959); *Clark Investment, supra*, 364 F.2d at 9; *United States v. Stadium Apartments, Inc.*, 425 F.2d 358, 364-65 (9th Cir. 1970); *Branden, supra*, 293 F.Supp. at 873; *United States v. Forest Glen Senior Residence*, 278 F.Supp. 343, 344 (D.Ore. 1967); *cf. United States v. MacKenzie*, 510 F.2d 40 (9th Cir. 1975). Under federal law, as it is set forth in this opinion, the action of the City to collect payment on the bond without protecting the federal interest was an unconstitutional exercise of state power over property of the United States. Therefore, the sale to appellant Rust cannot be upheld.

IV.

A number of other issues are argued by the parties. Because we reach the conclusion that the sale was invalid, consideration of these other issues is unnecessary to our decision in this case and we express no opinion on the treatment they received in the court below. *Immigration & Naturalization Service v. Bagamasbad*, 429 U.S. 24, 25 (1976).

The judgment of the district court is AFFIRMED.

APPENDIX C.

Order.

United States Court of Appeals, for the Ninth Circuit.

Pauline Rust, Appellant, vs. Paul Johnson and Nora Johnson, Respondents. No. 77-2493.

City of Los Angeles, Appellant, vs. Paul Johnson, Nora Johnson, and the Secretary of Housing and Urban Development, Respondents. No. 77-2602.

Filed: June 14, 1979.

Before: WALLACE and HUG, Circuit Judges, and TEMPLAR,* District Judge.

The petitions for rehearing of appellants Pauline Rust and City of Los Angeles are denied.

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*Honorable George Templar, Senior United States District Judge, District of Kansas, sitting by designation.

APPENDIX D.

National Housing Act, 12 U.S.C. §§1701 et seq.

12 U.S.C. §1714.

Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, ot the same extent, according to its value, as other real property is taxed.

12 U.S.C. §1723a(a)

Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Col-

umbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

[The "Association" referred to in Section 1723a (a) is the Government National Mortgage Association—GNMA—as distinguished from the Federal National Mortgage Association—FNMA—referred to as the Act as the "Corporation."]

12 U.S.C. § 1723a(c)

(c) (1) The Association, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxa-

tion to the same extent according to its value as other real property is taxed.

(2) The corporation, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

APPENDIX E.

Improvement Act of 1911—California Streets and Highways Code §§5000, et seq.

Section 3121 (West's Annotated California Codes, Vol 63, p 649)

> Not later than 10 days after (1) making demand upon or application to the treasurer or other officer of the city to sell property for such delinquency or (2) commencing an action or proceeding in any court to foreclose the lien of such special assessment or bond, the assessment lienholder shall record with the county recorder a notice of pendency of such sale or foreclosure.

Section 5372 (West's Annotated California Codes, Vol 63A, p 224)

> The warrant, diagram and assessment shall be recorded in the office of the superintendent of streets and in accordance with Section 5372.1 and may be recorded at any hour of the calendar day. Immediately thereafter the clerk shall record a notice of assessment, as provided for in Section 3114, whereupon, as provided in Section 3115, said assessment shall attach as a lien upon the property assessed.

Section 6500 (West's Annotated California Codes, Vol 63A, p 411-412)

> Whenever payment upon either the principal or the interest of any bond is not made to the bondholder when the coupon therefor is due, and the holder of the bond demands in writing that the treasurer proceed to advertise and sell the lot or parcel of land described in the bond as being that upon which the assessment represent-

ed by the bond was levied, the treasurer shall proceed to advertise and sell the lot or parcel of land as provided in this chapter.

Section 6501 (West's Annotated California Codes, Vol 63A, p 414)

The treasurer shall mail a notice of sale to the owner of any property to be sold for nonpayment of either principal or interest upon any delinquent bond. The notice shall be mailed postage prepaid to his last known address as shown upon the tax rolls or as filed in the office of the clerk. The notice shall be substantially in the following form:

"Notice of Sale of Property Delinquent
for Nonpayment of Street Improvement
Bond

You are hereby notified that Bond....., Series ....., for an improvement in the City (or County) of ....., is delinquent. Unless the amount of the unpaid principal on said bond, together with interest and penalties, is paid to the city (or county) treasurer on or before six months after the mailing of this notice, the date of which being this ..... day of ....., 19....., the undersigned will institute proceedings to foreclose the lien of said bond in the manner prescribed by law."

Section 6503 (West's Annotated California Codes, Vol 63A, p 415)

After the expiration of six months from the time of mailing the notice and upon payment by the holder of the bond to the treasurer of the estimated expenses of publication of a notice of sale, the treasurer shall publish a notice of

sale in a newspaper of general circulation, published in the city in which the bond was issued, or if no newspaper is published in the city, then in some newspaper having general circulation therein.

Section 6572 (West's Annotated California Codes, Vol 63A, p 438)

If any sale of lands for delinquency in the payment of principal or interest of any bond is held illegal or invalid, or any deed issued to the purchaser at any such sale is held illegal or invalid for any reason whatsoever, the lands described in the bond shall not be released from the lien of the assessment but shall be and remain subject to further proceedings for the enforcement of the assessment, and the further proceedings may include additional sales or the issuance of new deeds. In any event, however, the lien of the assessment shall continue only until a valid sale is had and a valid deed issued, or until the expiration of two years after such sale or deed is held illegal or invalid, whichever is sooner.

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